

AMENDED IN ASSEMBLY APRIL 19, 2005

CALIFORNIA LEGISLATURE—2005–06 REGULAR SESSION

ASSEMBLY BILL

No. 1043

Introduced by Assembly Member Harman

February 22, 2005

An act to amend Section 481.5 of, and to repeal Section 393 of, the Insurance Code, relating to insurance premiums.

LEGISLATIVE COUNSEL'S DIGEST

AB 1043, as amended, Harman. Insurance: unearned premium.

Existing law requires that, whenever any admitted or nonadmitted insurer rejects, declines, or cancels any of certain policies of insurance and the unearned premium is tendered to an insurance broker or agent of record as the insurer's agent, the unearned premium be tendered by the broker or agent to the insured or the person entitled thereto within 30 days of his or her receipt of the unearned premium from the insurer, except as specified.

This bill would delete the above requirement.

Existing law requires that, whenever an insurer endorses, rejects, declines, cancels, or surrenders any of certain automobile or property insurance policies, the unearned premium be tendered to the insured or to the person entitled thereto or to the insurance agent of record as the insurer's agent for transmittal within 25 days after the cessation or amendment of coverage. Existing law requires that, if this unearned premium is tendered to the insurer's agent, the agent tender this premium to the insured or to the person entitled to the premium within a specified period after the agent receives the premium.

Existing law requires that whenever a policy not covered by the above provisions is canceled pursuant to certain provisions of law relating to premium financed policies, the unearned premium be

tendered to the person entitled thereto or to the insurance agent of record as the insurer's agent for transmittal within 120 days after the cessation of coverage.

This bill would revise and recast these provisions. The bill would apply the provisions to all policies of personal lines insurance. It would eliminate the 120-day deadline for the return of unearned premium for premium financed policies, and would apply ~~the a~~ 25-day deadline ~~described above~~ *for the return of gross unearned premium*. The bill would impose a 60-day deadline for the return of gross unearned premium when an insurer endorses, rejects, declines, cancels, or surrenders a certain type of commercial insurance policy, except as specified.

The bill would impose specified requirements on insurers, brokers, and others with respect to returning unearned premiums, providing notice, and applying offsets to amounts owed to insureds. It would require an insurer to provide an accounting to the insured regarding the calculation of an unearned premium refund, and would require the Insurance Commissioner to adopt regulations regarding this accounting.

The bill would allow an insurer, in its policy, to reserve the right to apply the unearned premium generated by an endorsement removing or reducing coverage for an insured person or property to the balance owed on the policy as a whole, rather than tendering a refund of the unearned premium.

The bill would make other technical changes.

Vote: majority. Appropriation: no. Fiscal committee: yes.
State-mandated local program: no.

The people of the State of California do enact as follows:

- 1 SECTION 1. Section 393 of the Insurance Code is repealed.
- 2 SEC. 2. Section 481.5 of the Insurance Code is amended to
- 3 read:
- 4 481.5. (a) Whenever an insurer endorses, rejects, declines,
- 5 cancels, or surrenders a policy of personal lines insurance, or
- 6 such a policy is canceled pursuant to Section 673, the insurer
- 7 shall tender the gross unearned premium to the insured, unless
- 8 ~~either of the following applies:~~
- 9 ~~(1) If the insurer has been provided with a written assignment~~
- 10 ~~in which the insured has transferred his or her right to receive the~~

~~1 unearned premium to a broker-agent or to a premium finance
2 company, the insurer may, at its election, tender the gross or net
3 unearned premium, as applicable, to the broker-agent or premium
4 finance company.~~

~~5 (2) If the insurer has been provided with a copy of a finance
6 agreement between the insured and a premium finance company
7 indicating that the insured has transferred his or her right to
8 receive the unearned premium to the premium finance company,
9 the insurer may, at its election, tender the gross or net unearned
10 premium, as applicable, to the premium finance company.~~

~~11 (b) The unearned premium shall be tendered to the appropriate
12 party within 25 days after the event that generated the unearned
13 premium, or within 25 days after receipt by the insurer of notice
14 from a premium finance company of a cancellation pursuant to
15 Section 673. Any unearned premium the insurer fails to tender
16 within the time specified above shall bear interest at the rate of
17 10 percent per annum from and after the date on which the
18 unearned premium was required to be tendered. For the purposes
19 of this section, the tender of any unearned premium to the
20 insured shall be deemed complete upon the deposit of the
21 unearned premium in the United States mail, prepaid, addressed
22 to the named insured at the last known address.~~

~~23 (e) subdivision (b) applies.~~

*24 (b) If the insurer has been provided with a notification of
25 written assignment in which the insured transferred his or her
26 right to receive the unearned premium to a producer or premium
27 finance company, the insurer may, at its election, tender the
28 gross or net unearned premium to the producer or premium
29 finance company. If the insurer tenders the net rather than gross
30 unearned premium, it shall remain liable for payment of the
31 gross unearned premium if a producer fails to remit unearned
32 commission to the insured or premium finance company.*

*33 (c) The gross unearned premium shall be tendered to the
34 appropriate party within 25 days after the insurer receives notice
35 of the event that generated the gross unearned premium, or
36 within 25 days after receipt by the insurer of notice from a
37 premium finance company of a cancellation pursuant to Section
38 673.*

*39 (d) (1) Whenever an insurer endorses, rejects, declines,
40 cancels, or surrenders a policy of commercial insurance, as*

1 defined in Section 675.5, the *gross* unearned premium shall be
2 tendered as provided in subdivision (a) of this section within 60
3 days, *or 75 days if the policy is auditable*.

4 (2) Notwithstanding paragraph (1), an insurer shall not be
5 required to tender the unearned premium within ~~60~~ 75 days if the
6 final unearned premium amount cannot be determined due to the
7 insured's failure, in breach of a policy requirement, to cooperate
8 with the insurer in a premium audit.

9 ~~(d)~~

10 *(e) Any unearned premium that an insurer fails to tender*
11 *within the time periods specified in subdivisions (c) and (d) shall*
12 *bear interest at the rate of 10 percent per annum from and after*
13 *the date on which the unearned premium was required to be*
14 *tendered. For the purposes of this section, the tender of any*
15 *unearned premium to the insured shall be deemed complete upon*
16 *the deposit of the unearned premium in the United States mail,*
17 *prepaid, addressed to the named insured at the last known*
18 *address.*

19 *(f) For the purpose of this section, the following definitions*
20 *apply:*

21 (1) "Gross unearned premium" means the unearned portion of
22 the full amount of the premium charged to the insured, including
23 the unearned portion of any amount of the premium the insurer
24 allocated to a ~~broker-agent~~ *producer* as commission.

25 (2) "Net unearned premium" means the gross unearned
26 premium minus the unearned commission.

27 ~~(e)~~

28 *(g) The interest penalty required by this section shall not apply*
29 *to any insurer in conservatorship or liquidation, nor shall such an*
30 *insurer be subject to any other penalty for failure to remit*
31 *unearned premium in accordance with the time periods required*
32 *by this section.*

33 ~~(f) (1) An assignment under paragraph (1) of subdivision (a)~~

34 *(h) (1) An assignment under subdivision (b) shall be valid*
35 *only for the purpose of paying the ~~broker-agent~~ *producer* for a*
36 *premium the insured owes the ~~broker-agent~~ *producer* on the*
37 *same or another policy.*

38 (2) If the insured notifies the insurer, 15 or more days after the
39 insurer's tender of unearned premium to the ~~broker-agent~~, *that*
40 ~~the ~~broker-agent~~ *producer*, that the *producer* has failed either to~~

1 remit the unearned premium to the insured or to issue to the
2 insured an accounting of an offset permitted by Section 1735.5,
3 the insurer shall, within an additional 15 days, either tender the
4 unearned premium directly to the insured or provide the insured
5 with the ~~broker-agent's~~ *producer's* accounting of an offset
6 permitted by Section 1735.5.

7 (3) Whenever an insurer tenders the net rather than gross
8 unearned premium to a ~~broker-agent~~ *producer* or premium
9 finance company, the insurer shall contemporaneously notify the
10 ~~broker-agent~~ *producer* of the amount of the unearned
11 commission.

12 (4) If an insurer elects to tender the net rather than the gross
13 unearned premium to a premium finance company, the insurer
14 shall document that the ~~broker-agent~~ *producer* tendered unearned
15 commission to the premium finance company within 25 days
16 after the event that generated the unearned premium, or within 25
17 days after receipt by the insurer of notice from a premium
18 finance company of a cancellation pursuant to Section 673.

19 ~~(g) Whenever a broker-agent receives unearned premium from~~

20 *(i) Whenever a producer receives unearned premium from an*
21 *insurer or its agent, a premium finance company, another*
22 *broker-agent producer, or any other person on account of an*
23 *insured, the broker-agent producer receiving the money shall*
24 *tender that money to the insured, or account to the insured for*
25 *any offset permitted by Section 1735.5, within 15 days. If the*
26 *broker-agent producer fails to tender payment of the unearned*
27 *premium within 15 days, the broker-agent producer shall pay the*
28 *insured interest at the rate of 10 percent per annum from the date*
29 *on which the money was required to be tendered.*

30 ~~(h)~~

31 *(j) In addition to the required unearned premium refund, an*
32 *insurer shall provide an insured both the insured and the*
33 *producer with an accounting and explanation of how the amount*
34 *of the refund was calculated. The explanation shall be clear,*
35 *concise, and easy to comprehend. The commissioner shall adopt*
36 *regulations setting forth standards to govern this subdivision.*

37 ~~(i) For purposes of subdivisions (a) to (c), inclusive,~~

38 *(k) For purposes of subdivisions (a) to (d), inclusive, if the*
39 *unearned premium is not assigned as security to a premium*
40 *finance agency pursuant to a premium finance agreement and the*

1 amount of unearned premium is less than twenty-five dollars
2 (\$25), tender of unearned premium shall include applying the
3 amount of unearned premium either to the renewal premium at
4 the next renewal date or to other premiums due, provided written
5 notice of either application is given to the insured within 30 days
6 after the endorsement, rejection, declination, cancellation, or
7 surrender of a policy of insurance. At the time of endorsement or
8 surrender of a policy of insurance or, within 15 days after the
9 mailing of the written notice required by this subdivision, the
10 insured may request in writing that the unearned premium be
11 tendered as provided in subdivisions (a) to ~~(e)~~ (d), inclusive.
12 Whenever the amount of unearned premium is less than five
13 dollars (\$5), tender shall be effective and the written notice
14 required by this subdivision shall not be required if the unearned
15 premium is applied either to the renewal premium at the next
16 renewal date or to other premiums due.

17 *(k) Notwithstanding subdivisions (a) to (d), inclusive, an*
18 *insurer may, in its policy, reserve the right to apply the unearned*
19 *premium generated by an endorsement removing or reducing*
20 *coverage for an insured person or property to the balance owed*
21 *on the policy as a whole, rather than tendering a refund of the*
22 *unearned premium.*